



IT IS SO ORDERED.
Signed September 30, 2013

A handwritten signature in black ink, reading "Arthur S. Weissbrodt".

Arthur S. Weissbrodt
U.S. Bankruptcy

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re HARBANS S. GREWAL and
MANJIT KAUR GREWAL,

Debtors.

Case No. 10-60800

Chapter 7

HARBANS and MANJIT GREWAL,

Plaintiffs,

vs.

Adversary No. 11-5067

SANTA CRUZ COUNTY BANK, AND
DOES 1-10,

Defendants.

MEMORANDUM DECISION AND ORDER FOLLOWING TRIAL

This matter came before the Court for a trial on claims asserted by Plaintiffs Harbans and Manjit Grewal ("the Grewals")¹ against Defendant, Santa Cruz County Bank ("SCCB"). The Grewals were represented by attorney William Healy, and SCCB was

¹ Collectively, the Court will refer to both Plaintiffs as "the Grewals." Individually, Harbans Grewal is referred to as "Mr. Grewal."

1 represented by attorney William Thomas Lewis.

2 At trial, each side called witnesses to testify. The Grewals
3 testified on their own behalf. Debra Crawford, Rich Dunham, Jorge
4 Reguerin, and Susan Chandler testified on behalf of SCCB. The
5 testimony of Jayant Trivedi was entered by deposition.

6 After considering the parties' evidence and arguments of
7 counsel, the Court finds and concludes that SCCB's post-petition
8 possession of the refrigerator and water cooler violated the stay
9 (and possibly also the discharge injunction), but no other
10 violation of the stay or discharge injunction was proven.

11 This Memorandum Decision constitutes the Court's findings of
12 fact and conclusions of law, pursuant to Rule 7052 of the Federal
13 Rules of Bankruptcy Procedure.

14 15 I. SUMMARY

16 Facing a balloon payment Mr. Grewal could not afford, Mr.
17 Grewal successfully refinanced Mr. Grewal's loan on a gas and
18 service station located in Gilroy, California with SCCB in August
19 of 2007. SCCB placed liens against both the real property and
20 against the business, Mr. Grewal's wholly owned corporation, All
21 American Gas and Auto, Inc. (hereafter, "All American"), as
22 collateral for this loan.

23 On September 29, 2010, SCCB foreclosed, and changed the
24 business' locks. The Grewals filed a personal bankruptcy petition
25 on October 18, 2010. At that time, certain property, including a
26 smog machine, was located inside the business. The Grewals now
27 contend that the property left inside the business was the personal
28 property of Mr. Grewal, not the property of All American, and that

1 SCCB's failure and/or refusal to return that property to Mr. Grewal
2 violated the automatic stay and discharge injunction, 11 U.S.C.
3 §§ 362 and 524. SCCB contends the property belonged to All
4 American, not Mr. Grewal, and that SCCB received insufficient
5 notice of what property was included in the bankruptcy case due to
6 the schedules filed by the Grewals.

7 The issue for this Court to determine is whether SCCB
8 committed a violation of the automatic stay (11 U.S.C. § 362) or of
9 the discharge injunction (11 U.S.C. § 524).

10 11 **II. FINDINGS OF FACT**

12 **A. Mr. Grewal and Grewal Shell**

13 In May 2000, Mr. Grewal purchased Ellis & Larry's Shell, a gas
14 station business, located at 8395 Monterey Street in Gilroy,
15 California, from Larry Nardinochhi for \$155,000. Mr. Grewal began
16 to do business at that location as "Grewal Shell." The building
17 consisted of a gas station, store, and service bay for doing
18 automotive work. As part of the purchase, Mr. Grewal also took
19 possession of the business' equipment, fixtures, and inventory,
20 including an old smog machine. At the time, it was Mr. Grewal's
21 intention to take what Mr. Grewal perceived to be a troubled
22 business, turn it around, and then sell the business so that Mr.
23 Grewal could finance the purchase of a separate business closer to
24 Mr. Grewal's home in Milpitas, California.

25 In 2003, Mr. Grewal replaced the old smog machine that was
26 purchased with the business with a new smog machine. The old smog
27 machine was donated to a mechanic's school in 2003, and Mr. Grewal
28 leased a new smog machine from BWC Equipment Leasing. The new smog

1 machine consisted of three components: a dynamometer, cooling fan,
2 and computer unit. The dynamometer was a large device that sat in
3 a concrete bay in the ground, where a car could park its tires on
4 top of it. The dynamometer was not attached or bolted to the
5 structure. The cooling fan and computer unit were separate
6 devices, and could be moved around. This lease included a \$1
7 buyout provision upon completion of the lease payments; it is
8 unclear from the evidence whether or when the buyout occurred, or
9 under what circumstances it could occur in the future.²

10 **B. Formation of All American and Purchase of Real Property**

11 In 2004, Shell Corporation contacted Mr. Grewal and informed
12 him that Shell would be closing the gas station, and Mr. Grewal
13 could either purchase the real property for \$1,000,000 or leave.
14 Mr. Grewal was given 45 days to decide. Grewal Shell had not
15 posted a profit since 2002. Mr. Grewal decided to purchase the gas
16 station, including the associated real property, and formed a
17 corporation, All American, in March 2004 to effectuate the
18 purchase. In order to finance the purchase, Mr. Grewal obtained a
19 hard money loan from Coast Capital. Escrow closed in June 2004.

20 Mr. Grewal testified that in forming All American, it was Mr.
21 Grewal's intent to use All American as a real estate holding
22 company. In this regard, Mr. Grewal intended that All American

23
24 ² The lease documents for the smog machine -- including the
25 \$1.00 buyout letter -- were mentioned in a letter dated June 4,
26 2003 from BWC Equipment Leasing to Mr. Grewal (See Exhibit No. 16),
27 but not all of the lease documents were attached to the letter.
28 According to the Addendum to Lease (Exhibit No. 16), Mr. Grewal had
the option of purchasing the smog machine for \$1.00 after making
all lease payments. The date of the final lease payment was not
specified. The purchase order for the smog machine is Exhibit Q,
but the purchase order was also silent as to the lease's terms.

1 would hold the real estate as well as the equipment needed for the
2 gas station, such as the underground tanks and pumps. According to
3 Mr. Grewal, he intended that the smog check and mechanic's
4 businesses would remain separate.

5 Upon formation of All American, Mr. Grewal transferred a
6 number of assets to the corporation. Mr. Grewal's accountant,
7 Jayant Trivedi, via deposition entered into evidence, testified
8 that it was Mr. Trivedi's understanding that all assets of Grewal
9 Shell were transferred to All American. According to Mr. Trivedi,
10 it would have been Mr. Trivedi's practice to ask Mr. Grewal if any
11 assets were not to be transferred to All American.

12 From the formation of All American through its demise in 2010,
13 All American maintained insurance on the business and equipment in
14 All American's name. No separate policy was created to cover a
15 different business operating at that location; the only policies
16 offered into evidence were the old policy for Grewal Shell, then
17 the new policies for All American. Mr. Grewal testified that Mr.
18 Grewal believed that because Mr. Grewal was a mechanic, Mr.
19 Grewal's personal property was covered under the insurance
20 agreement. However, the policies were business policies -- renewed
21 from year to year -- which only provided coverage to All American
22 for its building and "business personal property." Mr. Grewal was
23 not a named insured or an additional insured. There was no expert
24 testimony as to whether Mr. Grewal's personal property was covered
25 under the insurance agreement.

26 All American also filed 571-L Business Property Statements
27 with the County of Santa Clara from inception to termination; no
28 other Business Property Statements were filed by Mr. Grewal for any

1 other business entity. SCCB's witness, Rick Dunham, CPA, testified
2 based on Mr. Grewal's tax filings since 2002 (filings prior to 2002
3 were not available), that the entirety of the business purchased in
4 2000 from Larry and Ellis Shell by Grewal Shell was transferred to
5 All American in 2004. Mr. Dunham further testified that a review
6 of All American's tax filings from 2004 through 2010 evidenced no
7 disbursement of assets from the corporation. The form and scope of
8 the business, which were not defined, were not discussed by Mr.
9 Dunham.

10 Mr. Grewal's personal tax returns from 2002 through 2010, and
11 the tax returns for All American, from 2004 through 2010, were
12 entered into evidence.

13 After the purchase from Shell Corp., All American began
14 operating the business as Gilroy Gas and Auto. Mr. Grewal
15 testified that after the formation of All American, All American
16 made all the lease payments on the smog machine. Mr. Grewal
17 testified that this was because Mr. Grewal's bank account for Mr.
18 Grewal's sole proprietorship³ was closed and Mr. Grewal was not
19 doing business, and All American was using the smog machine to
20 generate revenue for the business. Mr. Grewal testified that
21 clients were billed after incorporation as "Gilroy Gas and Auto
22 Service," and when the dba changed in 2007, clients were billed
23 under "Gilroy VP Racing."

24 Mr. Grewal further testified that after incorporation, the
25 business continued to sell gas, operate a store, and perform

26 ³ It was not clear from Mr. Grewal's testimony what the name
27 of the sole proprietorship was.
28

1 automotive repairs, including brake and smog inspections. On July
2 11, 2007, Gilroy Gas and Auto purchased an EVAP⁴ unit, which due to
3 a change in state law was required in order to continue operating
4 the smog business. Mr. Grewal testified that the EVAP was
5 purchased in All American's name because the EVAP machine was sold
6 only to businesses with a license for smog inspections. However,
7 the parties stipulated that Mr. Johnson, a person knowledgeable
8 with the bureau of automotive affairs, would testify that "there is
9 no licensing requirement, by the bureau, for anybody who purchases
10 an EVAP machine or smog equipment; there is only a licensing
11 requirement for one to -- for a location for one to conduct a smog
12 inspection and repair business, and a licensing requirement for a
13 service tech that would actually do the physical smog inspection
14 and repair work. But the mere ownership of an EVAP machine and a
15 smog machine does not trigger any sort of licensing requirement."
16 Mr. Grewal, when recalled to the stand, testified that Mr. Grewal
17 meant that because All American had a license to perform smog
18 checks, and was performing smog checks, the EVAP machine was bought
19 in All American's name.

20 **C. SCCB's Loan**

21 By 2007, Mr. Grewal's business had still not shown a profit
22 since 2002, and a balloon payment on the loan from Coast Capital

23 ⁴ Mr. Grewal testified that an EVAP unit is a separate device
24 from the smog machine apparatus that measures the gasoline in a
25 vehicle's gas tank during the smog check. While not a part of the
26 smog machine apparatus, the EVAP unit is legally necessary to
27 perform smog certifications. The testimony in this regard was not
28 entirely clear, but it may mean that prior to 2007, smog
certifications could be performed without the use of an EVAP
machine.

1 was about to come due in August 2007. Mr. Grewal was not able to
2 make that payment, and without refinancing, expected to be
3 foreclosed upon. Mr. Grewal contacted a number of lenders to
4 obtain a loan to refinance, but was rejected.

5 Mr. Grewal was put in touch with Jorge Reguerin, an employee
6 at Heritage Bank, regarding the refinancing. Because of the
7 looming payment, in June 2007, Mr. Grewal and Mr. Reguerin met at
8 the Cupertino Post Office, where Mr. Reguerin explained the SBA 7A
9 program, discussing the terms, details, and what collateral would
10 be required. At some point, Mr. Reguerin visited the gas station.
11 During this process, Mr. Reguerin left Heritage Bank and began
12 working for SCCB.

13 According to Mr. Grewal, Mr. Grewal told Mr. Reguerin that
14 because the business had no income,⁵ the loan would have to be
15 based on the value of the real property. Later, on cross-
16 examination, Mr. Grewal testified that Mr. Grewal told Mr. Reguerin
17 that: (1) Mr. Grewal owned "the shop business as Grewal Shell and
18 that's the part I owned previously even before the real estate";
19 and (2) Mr. Grewal had an ownership interest in assets at the
20 gasoline station. However, Mr. Grewal admitted that Mr. Grewal did
21 not specifically tell Mr. Reguerin or SCCB that Mr. Grewal owned
22 assets individually which Mr. Grewal was not pledging for the loan.

23 SCCB approved the refinance for Mr. Grewal. Even though it
24 was All American which owned the real estate, Mr. Grewal guaranteed
25 the loan. In July 2007, Mr. Grewal received a letter from SCCB

26
27 ⁵ Although Mr. Grewal testified that the business had no
28 "income," the Court interprets this to mean that the business was
not making a profit.

1 stating that as collateral for the loan, there would be a first
2 deed of trust recorded on the real property, and a "UCC-1 filing on
3 business." Mr. Grewal testified that at the time Mr. Grewal got
4 the loan from SCCB the business was "shut down for the gas part."⁶

5 The business loan agreement between Mr. Grewal and SCCB --
6 which was secured by the real estate and the UCC-1 filing --
7 required any notices by Mr. Grewal to SCCB to be given in writing,
8 and directed to the address at the beginning of the agreement --
9 Santa Cruz County Bank, Santa Cruz Office, 325 Soquel Ave, Santa
10 Cruz, CA 95062. The UCC-1 filing -- which SCCB recorded with the
11 Santa Clara County Recorder on August 20, 2007 (Exhibit AY) --
12 specified that SCCB's security interest extended to the following
13 collateral: "All Fixtures, Inventory, Chattel Paper, Accounts,
14 Equipment, General Intangibles and Fixtures[.]"

15 Gilroy Gas and Auto continued to struggle. In November 2007,
16 Gilroy Gas and Auto changed its name to "Gilroy VP Racing," and
17 began selling 100-octane high performance gasoline to attract
18 customers.⁷

19 **D. Mr. Grewal's Attempt to Sell the Business**

20 Mr. Grewal testified that in 2010, in an attempt to sell the
21 entire business, Mr. Grewal contacted Business Team, an
22 organization that had previously helped Mr. Grewal in the purchase
23 of the gas station. Mr. Grewal testified that Mr. Grewal informed

24 ⁶ The evidence concerning when Gilroy Gas and Auto sold
25 gasoline and the octane level of the gasoline was not crystalline.

26 ⁷ It was unclear from the evidence whether, at this juncture,
27 Gilroy VP Racing only sold high octane gasoline, or whether the
28 business sold a wide range of gasoline products.

1 Business Team that All American was the owner of the real property
2 and gas station, and the mechanic's business and its equipment were
3 Mr. Grewal's personal property. However, his testimony was not
4 supported by any other evidence as to the separate nature of the
5 mechanic's business and equipment.

6 Business Team located a willing buyer. The offer, submitted
7 to SCCB, listed the seller as "All American Gas & Auto, Inc" and
8 was signed by Mr. Grewal, dated September 4, 2010. (Exhibit DU).
9 Mr. Grewal's initials appeared on each page. Each page of the
10 agreement is initialed by Mr. Grewal. The agreement provided for
11 certain items to be excluded from sale, listing that "auto mechanic
12 employee has own tools." However, Mr. Grewal testified that as
13 part of the sale, Mr. Grewal intended to sell Mr. Grewal's personal
14 property to the buyers, including the smog machine. According to
15 Mr. Grewal, there would be a split escrow; All American was to
16 transfer the real property to the buyers, and Mr. Grewal was to
17 transfer Mr. Grewal's personal property to the buyers. The
18 document (Exhibit DU) appears to be for a sale between All American
19 and a buyer, but there is no evidence in the sale agreement of the
20 Grewals possessing or selling any personal property. Mr. Grewal
21 testified that Mr. Grewal objected to the document listing the
22 seller as All American and not Mr. Grewal, and that Mr. Grewal
23 signed as an individual, not as All American's representative,
24 contrary to what appeared on the document. Mr. Grewal testified
25 that after the submission of the agreement, the agreement was to be
26 amended to reflect Mr. Grewal's individual capacity; however, due
27 to the need to move quickly, there was not time to change the
28 document prior to signing and initialing. However, multiple pages

1 contained handwritten edits and interlineations, which indicates
2 that there was sufficient time to make handwritten amendments to
3 clarify that Mr. Grewal was signing in an individual capacity, if
4 that had been his intent.

5 The agreement was presented by Mr. Grewal's agent to SCCB with
6 the request to approve. Mr. Grewal testified that because SCCB's
7 loan was already in foreclosure, SCCB's approval of the sale was
8 necessary. SCCB did not approve the sale.

9 **E. Mr. Grewal's Bankruptcy and Post-Petition Events**

10 About August of 2010, SCCB's employee, Debra Crawford, noticed
11 that the gas station appeared empty and no longer operating. On
12 September 29, 2010, SCCB foreclosed on its lien, and that same day,
13 had the locks changed. Inside the building were a number of items,
14 including the smog machine, some items related to car repair, as
15 well as tools and equipment belonging to Mr. Grewal's employee,
16 Roberto Martinez. Mr. Grewal testified that around this time the
17 business had ceased operation, but Mr. Grewal continued to use the
18 building for personal projects.

19 Mr. Grewal's counsel contacted Debra Crawford via letter
20 around October 3, 2010, seeking to take possession of some
21 property, stating that property was property of Mr. Grewal, not All
22 American. The list (hereafter, "the October 3, 2010 List")
23 contained: a 1993 BMW 740il; BMW engine; BMW rims; Mercedes Benz
24 rims; a water cooler; a small refrigerator; a blue air hose; a
25 black box with tools inside; a cardboard box with tools inside; a
26 grey box holding air conditioning hoses; gauges; jumper cables; a
27 plastic bag with clothes; a floor jack and jack stands; a
28 motorcycle and parts; funnels; two radios; a red craftsman creeper;

1 a fluid evacuation pump; a long arm glow auto opening tool; a grey
2 box soldering gun kit; an acetylene welding and cutting kit; a
3 black oil drain pipe; a multipurpose drain pan; bazooka speakers; a
4 military metal box with tools inside; two work lights; a yellow
5 extension cord; a Snap-On box with shoes; a plastic bag with
6 transmission oil; a Craftsman blower; a Napa cardboard box with
7 pullers inside; a UPS box with a car computer inside; plastic and
8 glass jars; and a red vise. Notably, the letter did not mention
9 the smog machine or its components. A letter sent on October 12,
10 2010, reiterated the request, and offered SCCB a release if in
11 addition to the above-listed-items, SCCB released a grinder, the
12 smog machine, personal clothing, books, and a desktop computer.

13 On or about October 8, 2010, Mr. Grewal's former employee,
14 Roberto Martinez, claimed and recovered a number of items on the
15 October 3, 2010 List. During that same visit, Mr. Martinez rolled
16 the BMW 740il out of the garage. Mr. Martinez initialed the
17 October 3, 2010 List, and signed a note stating Mr. Martinez had
18 claimed and taken the marked items. The items taken mostly
19 consisted of the tools on the October 3, 2010 List.

20 On October 18, 2010, the Grewals filed for bankruptcy. The
21 Grewals' Schedule B, filed October 18, 2010, lists "Automotive
22 equipment including wheel balancer and smog machine," stating a
23 value of \$5,600. That same schedule contained a duplicate of that
24 page, listing "Automotive equipment including wheel balancer and
25 smog machine," but stating a value of \$4,000. On examination, Mr.
26 Grewal could not explain the difference in values. Mr. Grewal
27 testified that in August 2010, there were private sellers of smog
28 machines on the market, priced from \$18,000 and up. However, Mr.

1 Grewal testified that the smog machine at issue needed repairs
2 costing between \$2,600 and \$3,200. The Grewals' Schedule C listed
3 mechanical equipment worth \$4,000, along with \$4,000 in exemptions.
4 Notice of the Grewals' Chapter 7 filing was sent to SCCB at P.O.
5 Box 8426, Santa Cruz, California 95061 -- but not to SCCB's address
6 stated in the business loan agreement.⁸ The notice specified the
7 deadline of January 18, 2011, to file a complaint to deny a
8 discharge to the Grewals or to determine the dischargeability of
9 debts.

10 On November 4, 2010, the Grewals' counsel sent another letter
11 to Ms. Crawford at SCCB. The letter stated that it was
12 memorializing a previous phone conversation, where Ms. Crawford was
13 informed of the Grewals' Chapter 7 filing. Ms. Crawford could not
14 recall the telephone conversation, but could not deny its
15 occurrence. Ms. Crawford testified that Ms. Crawford saw -- on or
16 about November 4, 2010 -- a letter from the Grewals' counsel to
17 SCCB dated November 4, 2010; that letter clearly stated that Mr.
18 Grewal had filed for Chapter 7 bankruptcy on October 18, 2010, and
19 included the case number. Ms. Crawford further testified Ms.
20 Crawford had seen -- on or about December 16, 2010 -- another
21 letter sent from the Grewals' attorney to SCCB, which clearly
22 referenced Mr. Grewal's status as a Chapter 7 debtor, including a
23 case number.

24 On November 10, 2010, Ms. Crawford met with Mr. Grewal, Mr.

25 ⁸ SCCB contended that it did not receive timely notice of the
26 Grewals' bankruptcy case, and complained that the notice was not
27 sent to the proper address. As discussed infra, the evidence shows
28 that SCCB had timely notice of the bankruptcy.

1 Grewal's son, Gurgas Grewal ("Gurgas"), and Roberto Martinez at the
2 gas station. Gurgas, Mr. Grewal, and Ms. Crawford all testified
3 regarding the events which occurred during that meeting, but their
4 testimonies differed substantially.

5 Mr. Grewal testified that Mr. Grewal borrowed a truck to help
6 clear out the gas station, and drove to Gilroy. Upon arriving at
7 the gas station, Mr. Grewal encountered Ms. Crawford, who gave Mr.
8 Grewal a waiver of liability and hold harmless agreement and told
9 Mr. Grewal that Mr. Grewal must sign it before Mr. Grewal could
10 take any equipment. Mr. Grewal testified Mr. Grewal was surprised
11 and that Mr. Grewal did not fully understand the agreement or feel
12 comfortable signing it. Mr. Grewal thought that if Mr. Grewal
13 signed the paper, Mr. Grewal would not be able to come back and
14 retrieve more items on a subsequent trip for items Mr. Grewal could
15 not carry that day. Mr. Grewal testified that Mr. Grewal told Ms.
16 Crawford that Mr. Grewal could not move the tire machine or
17 dynamometer on that day. According to Mr. Grewal, Ms. Crawford
18 responded that Mr. Grewal could return later for those items, but
19 could take the rest of the items if Mr. Grewal would sign the
20 waiver first. Mr. Grewal testified that according to the paper
21 provided by Ms. Crawford, Mr. Grewal could not return for anything
22 which Mr. Grewal left at the gas station. Mr. Grewal photographed
23 and sent a copy of the agreement to Mr. Grewal's attorney and Ms.
24 Crawford spoke with the Bank.⁹ Ms. Crawford then exited the

25 ⁹ However, the photo of the agreement which Mr. Grewal stated
26 that he sent to his attorney was not offered into evidence.
27 Instead, Mr. Grewal offered a personal injury waiver (Exhibit No.
28 9) entitled "Waiver of Liability and Hold Harmless Agreement" and
(continued...)

1 building, locked the door, and left without saying anything to Mr.
2 Grewal.

3 Gurgas' testimony was somewhat different from the testimony of
4 Mr. Grewal. Gurgas testified that Gurgas, Mr. Grewal, and Roberto
5 Martinez attempted to collect the items. The three of them met Ms.
6 Crawford at the gas station. Gurgas testified that when Ms.
7 Crawford presented Mr. Grewal with a paper to sign, Mr. Grewal
8 refused to sign because the paper was incomplete. According to
9 Gurgas, Mr. Grewal told Ms. Crawford: "If I can't have the dyno, I
10 don't want anything." Gurgas testified that Ms. Crawford claimed
11 the dynamometer was a fixture, and Mr. Grewal, Gurgas, and Ms.
12 Crawford entered the garage to inspect the dynamometer. Gurgas
13 testified that throughout the encounter, Mr. Grewal was extremely
14 calm and relaxed, while Ms. Crawford became upset and angry when
15 Mr. Grewal refused to sign the paper. After speaking on the phone,
16 Ms. Crawford locked the building door and left the location without
17 speaking to Gurgas or Mr. Grewal. Gurgas testified that no items
18 were collected, and the three of them left the location without
19 taking any personal items from the location.

20 Ms. Crawford's testimony about the November 10, 2010, meeting
21 was quite different from the testimony of Mr. Grewal and Gurgas.

22 _____
23 ⁹(...continued)

24 identified the waiver as the agreement which Ms. Crawford had
25 provided to him. This waiver stated that Mr. Grewal would waive
26 claims against SCCB "arising out of or relating to any loss, damage
27 or injury, including death, that may be sustained by [Mr. Grewal],
28 or to any property belonging to [Mr. Grewal], whether caused by the
negligence [of SCCB]" while Mr. Grewal removed any personal
property from the real property. This waiver did not preclude Mr.
Grewal from returning to the real property to retrieve additional
items of personal property in the future.

1 The Court did not find Ms. Crawford's testimony regarding the
2 meeting to be particularly credible; despite Ms. Crawford's
3 testimony that Ms. Crawford had seen the November 4, 2010 letter
4 from the Grewals' counsel regarding the bankruptcy filing, Ms.
5 Crawford -- who was employed by SCCB in loan administration --
6 claimed to have had no knowledge of the Grewals' bankruptcy at the
7 time of the meeting.

8 According to Ms. Crawford's testimony, when Mr. Grewal arrived
9 at the meeting, Mr. Grewal had two men with him to help. Mr.
10 Grewal wanted to remove the dynamometer, but Ms. Crawford was
11 unsure if Mr. Grewal could take it because it might be a fixture.
12 Ms. Crawford testified that Mr. Grewal got mad and began to scream
13 and yell at Ms. Crawford. Ms. Crawford testified that other than
14 the dynamometer, Ms. Crawford permitted Mr. Grewal to take
15 everything else, and Mr. Grewal left in a truck filled with items.
16 Ms. Crawford testified that Mr. Grewal did not indicate that Mr.
17 Grewal wished to return for a second load.

18 No parties took pictures or made an inventory or accounting of
19 what assets were present or taken during the visit. On this issue,
20 no specific evidence was introduced. There were no subsequent
21 attempts by the parties to return or claim any assets.

22 **F. Mr. Grewal's Subsequent Business Venture**

23 After All American ceased its business operations, Mr. Grewal
24 opened a new business, "Ameek Auto," in Santa Clara. The location
25 was leased for three years, and had between five and seven service
26 bays. Ameek Auto was solely an auto-repair location, and Mr.
27 Grewal intended to perform smog and brake lamp inspections as well.
28 Mr. Grewal testified that the smog services were a driver for

1 business for the rest of Mr. Grewals' enterprise -- a way to get
2 people in the door. Aweek Auto did not have a smog machine, and
3 Mr. Grewal testified that Mr. Grewal was unable to finance one.
4 After six months, Aweek Auto closed because it was unable to
5 generate enough income to pay its bills.

6 **G. Items Mentioned in the Amended Complaint**

7 In the Amended Complaint, the Grewals have alleged that SCCB
8 violated both the automatic stay and the discharge injunction. The
9 Grewals also have alleged that Mr. Grewal stored a number of
10 individually-owned items at the gas station, which were used as
11 part of All American's car repair business. Such items were listed
12 in the Amended Complaint, as follows: a 1993 gold BMW 740il; BMW
13 engine on rollers; BMW rims with old tires; MBZ rims with old
14 tires; a water cooler; a small refrigerator; a dynamometer (in
15 ground); an evaporator machine (EVAP) next to smog machine; a big
16 cooling fan; "miscellaneous parts;" parts cleaner (blue box); "used
17 black hoses @ nozzles (on shelf);" a grinder; personal clothing and
18 blue towels; books; a desktop computer; an engine scope; a smog
19 machine; a grease dispenser; oil; a mop bucket; "o-rings & quarter
20 pins;" drain pans; a parts cart; a battery water container; and
21 funnels. The parties stipulated that the BMW 740il, used black
22 hoses with nozzles, and EVAP machine were not at issue in this
23 case.¹⁰

24 At trial, Mr. Grewal testified that the value of the BMW
25 engine listed in the Amended Complaint was probably \$200. Mr.

26 ¹⁰ At the start of trial, the Grewals stipulated the EVAP
27 machine was property of All American.
28

1 Grewal testified that the Grewals' Schedule B, item number 29,
2 which listed "Automotive equipment including wheel balancer and
3 smog machine," included the BMW rims and tires, and the MBZ rims
4 and tires. However, during his deposition, Mr. Grewal testified
5 that the MBZ rims did not appear on Schedule B. Mr. Grewal further
6 testified that the water cooler and small refrigerator were not
7 listed on the Grewals' schedule B, but were subsumed within the
8 \$4,000 category of line number 29. Mr. Grewal testified that both
9 the small refrigerator and water cooler were brought from home for
10 Mr. Grewal's personal use.

11 Mr. Grewal testified that Mr. Grewal claimed no interest in
12 the building at 8385 Monterey in Gilroy, where the business was
13 located. When asked whether Mr. Grewal had a lease, in Mr.
14 Grewal's personal capacity, from All American for the mechanic's
15 business, Mr. Grewal testified: "I was not running a separate
16 business; I was running, under All American, All American had a
17 shop, I was working there full time as [an] employee, or you can
18 call it owner, whatever you say it -- but I was president of the
19 company, I was running both sides of the business."¹¹

20 **H. Disposition of the Bankruptcy Case**

21 On November 25, 2010, Chapter 7 Trustee Mohamed Poonja entered
22 a report of no distribution, stating that the Grewals' estate had
23 been fully administered, and abandoned \$29,739.00 worth of assets.
24 This dollar amount appears to be derived from the Grewals' Schedule

25 ¹¹ Mr. Grewal vacillated between two theories of ownership
26 during his testimony -- that Mr. Grewal operated a separate
27 business on the land owned by All American, and that Mr. Grewal was
28 effectively an employee of All American and owned Mr. Grewal's
tools in that capacity.

1 B, which stated that the total value of the Grewals' personal
2 property was \$29,730.00. The Grewals received a Chapter 7
3 discharge on January 19, 2011.

4 **I. Current Status of the Assets**

5 On April 26, 2011, the Court issued a preliminary injunction
6 restraining SCCB from selling personal property stored at the gas
7 station. The preliminary injunction covered the following items: a
8 1993 gold BMW 740il; a BMW engine on rollers; a BMW rims with old
9 tires; a MBZ rims with old tires; a water cooler; a small
10 refrigerator; a dynamometer (in ground); an evaporator machine next
11 to smog machine; a big cooling fan; miscellaneous parts; parts
12 cleaner (blue box); "used black hoses @ nozzles (on shelf);" a
13 grinder; personal clothing and blue towels; books, a desktop
14 computer located in the shop; an engine scope; a smog machine; a
15 grease dispenser; oil; a mop bucket; o-rings and quarter pins
16 (small plastic boxes); three drain pans; a parts cart; a battery
17 water container; and an ERC tester with kit.

18 No witnesses testified regarding the current location or
19 status of any assets at issue in the case.
20

21 **III. CONCLUSIONS OF LAW**

22 **A. Ownership of Assets**

23 The threshold issue in this case is whether the Grewals had
24 any personal ownership interest in the assets located at the gas
25 station when the Grewals filed for Chapter 7 bankruptcy on October
26 18, 2010. Only with such ownership interest can the Grewals
27 prevail on the Grewals' claims that SCCB's refusal to return
28 property to the Grewals violated either the automatic stay or the

1 subsequent discharge injunction in the Grewals' bankruptcy case.
2 If, however, those assets were owned by All American and not by the
3 Grewals, then the assets would not have become property of the
4 bankruptcy estate and there would be no violation.

5 **1. The Smog Machine**

6 The smog machine is the only asset that is named in both the
7 Grewals' schedule B and in the Amended Complaint. Mr. Grewal
8 testified throughout the trial that the smog machine was Mr.
9 Grewal's personal property, and not an asset of All American. Mr.
10 Grewal testified that when he attempted to sell All American
11 through Business Team, the sale was to be conducted with a split
12 escrow, distinguishing the All American assets from Mr. Grewal's
13 personal property assets. Mr. Grewal testified that the personal
14 property assets included the smog machine.

15 However, there was substantial evidence that the smog machine
16 was an asset of All American. First, Mr. Grewal testified that
17 from the date All American was formed, All American made all the
18 payments on the smog machine, and received all of the income from
19 its use. Mr. Grewal testified there was no agreement between All
20 American and Mr. Grewal for the use of the smog machine, and All
21 American did not pay Mr. Grewal rent or otherwise compensate Mr.
22 Grewal for its use.

23 Second, in 2007, All American purchased an EVAP machine, which
24 Mr. Grewal testified was necessary to do smog inspection and
25 repairs. It is not logical that if it had been Mr. Grewal's intent
26 to maintain the smog and repair work as a separate business, and to
27 use All American as a real estate holding device, that this
28 essential machine would be owned by All American rather than by Mr.

1 Grewal.

2 Third, the evidence demonstrated that SCCB believed that there
3 was only one business operating, All American, and Mr. Grewal never
4 spoke up and rectified the alleged misconception before SCCB
5 approved the loan, or thereafter. The loan offer letter by SCCB to
6 Mr. Grewal lists a UCC-1 filing on the "business" as collateral; it
7 is clear that SCCB believed that there was only one business
8 operating at the location, and intended to use it to secure the
9 loan. This letter was delivered after Jorge Reguerin had inspected
10 the business location; Mr. Reguerin testified that Mr. Grewal went
11 over and explained each item in the letter to Mr. Grewal. Mr.
12 Reguerin testified that when he met Mr. Grewal, Mr. Grewal did not
13 tell Mr. Reguerin that Mr. Grewal owned any assets in his
14 individual capacity. Mr. Grewal repeatedly testified that certain
15 persons "knew" of the distinction between the smog business and All
16 American, but when pressed to identify whom Mr. Grewal had told,
17 Mr. Grewal admitted that Mr. Grewal had never informed SCCB of that
18 distinction.

19 Fourth, Mr. Grewal's conduct in operating the business
20 evidences that the only business was All American. Insurance was
21 held solely in All American's name. Mr. Grewal's taxes do not
22 evidence the existence of two separate businesses. Mr. Grewal
23 testified that Mr. Grewal's accountant did not track income from
24 the gas station, from the store, and from the mechanic's business,
25 separately. Mr. Grewal claimed to be able to track this himself,
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1 but this was not evident.¹²

2 Fifth, when All American was created, there was evidence that
3 all of the assets of Grewal Shell were transferred to All American.
4 Mr. Grewal testified that a complete transfer of these assets was
5 not Mr. Grewal's intention. However, Mr. Grewal's accountant,
6 Jayant Trivedi, testified that Mr. Trivedi did not recall any
7 special instructions not to transfer all of the assets to All
8 American. According to Mr. Trivedi, Mr. Trivedi only would have
9 transferred all of the assets after consulting Mr. Grewal. If Mr.
10 Grewal had intended to transfer less than all of the assets, Mr.
11 Grewal did not communicate that intention to anyone.

12 Sixth, Mr. Grewal's testimony regarding the business structure
13 of All American and the auto repair business was inconsistent. Mr.
14 Grewal testified at one point that the auto-repair business was
15 part of All American and Mr. Grewal worked there as an
16 employee/owner, but also testified that the auto-repair business
17 was not part of All American at all.

18 Finally, when Mr. Grewal attempted to sell the business, which
19 Mr. Grewal testified included the assets at issue in this lawsuit,
20 the sale documents signed and initialed by Mr. Grewal listed only
21 All American, and made no reference to Mr. Grewal having any
22 interest in any personal or business assets separate and apart from
23 those of the corporation.

24 ¹² Mr. Grewal's accounting raised some questions -- Mr. Grewal
25 repeatedly claimed that because Mr. Grewal was the one performing
26 the labor on a project, that entire amount was pure profit.
27 However, Mr. Grewal failed to account for the underlying costs of
operating the business -- for example, advertising, rent,
utilities, and keeping the lights on.

1 SCCB reasonably thought that the smog machine was part of its
2 collateral. SCCB's UCC-1 filing described SCCB's collateral as
3 including a wide variety of items, including equipment. Mr. Grewal
4 was silent about his secret intentions regarding the smog machine
5 when transferring assets from Grewal Shell to All American, and did
6 not inform SCCB that SCCB's collateral would exclude the smog
7 machine. Mr. Grewal had several chances to correct any
8 misconception by SCCB, but did not do so.

9 Given the above evidence, the Court finds and concludes that
10 the smog machine was an asset of All American, not the Grewals.
11 Therefore, SCCB's actions with regard to the smog machine could not
12 violate either the automatic stay or the discharge injunction.

13 2. The Remaining Property

14 The Court was presented with little evidence regarding the
15 ownership of the remaining assets in the Amended Complaint (i.e.,
16 the BMW engine on rollers, the BMW rims with old tires, the MBZ
17 rims with old tires, the dynamometer, among other items discussed
18 supra). Mr. Grewal testified that between the time when Mr. Grewal
19 ceased operating a business at the Gilroy location and SCCB's
20 foreclosure, Mr. Grewal was using the location to do work on
21 automobiles on Mr. Grewal's own. Unfortunately, little to no
22 evidence was presented regarding when the remaining assets were
23 acquired, under what conditions, and for what purposes.

24 The Court's task has not been helped by the fact that neither
25 party ever made an accounting or took pictures of the items within
26 the shop. The allegations in the Amended Complaint -- which are
27 not evidence -- were based on Mr. Grewal's memory, not a site
28 inspection. Mr. Grewal testified that Mr. Grewal believed, as a

1 mechanic, that Mr. Grewal owned the tools as his personal property;
2 this is bolstered by the fact that Mr. Grewal's employee, Roberto
3 Martinez, appears to have kept Mr. Martinez's personal tools at the
4 location (and SCCB allowed him to recover them without a problem).
5 Based on Mr. Grewal's testimony, it is likely that Mr. Grewal
6 personally owned some tools, but corroborative evidence of Mr.
7 Grewal's personal ownership of specific tools was lacking.

8 The only specific evidence of ownership which the Grewals
9 offered pertained to the water cooler and small refrigerator. Mr.
10 Grewal testified that Mr. Grewal brought both the water cooler and
11 small refrigerator from home for Mr. Grewal's personal use. This
12 evidence was unrebutted. Therefore, the Court finds that the small
13 refrigerator and water cooler were the personal property of Mr.
14 Grewal when the bankruptcy petition was filed, and became property
15 of the bankruptcy estate. Regarding the remaining items, there is
16 insufficient evidence for the Court to determine ownership or that
17 such property became property of the bankruptcy estate.

18 **B. Violation of the Stay or Discharge Injunction**

19 The only remaining question is whether SCCB's continued
20 possession of the refrigerator and water cooler was a violation of
21 the automatic stay or of the discharge injunction. The Grewals
22 filed their bankruptcy petition on October 18, 2010, and received a
23 discharge on January 19, 2011. SCCB's possession of the
24 refrigerator and water cooler commenced prior to the filing of the
25 petition, and is ongoing. This post-petition retention of the
26 estate's property clearly violated the automatic stay, and possibly
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28

1 also the discharge injunction.¹³ State of California Employment and
2 Dev. Dept. v. Taxel (In re Del Mission Ltd.), 98 F.3d 1147, 1151
3 (9th Cir 1996).

4 The Grewals seek to recover damages for the stay violation.
5 In order for the Grewals to recover damages on this claim, the
6 Grewals must demonstrate, by a preponderance of the evidence,
7 "(1) that a bankruptcy petition was filed, (2) that the [debtors
8 are individuals], (3) that the creditor received notice of the
9 petition, (4) that the creditor's actions were in willful violation
10 of the stay, and (5) that the debtor[s] suffered damages."

11 Bertuccio v. Cal. State Contractors Lic. Board, (In re Bertuccio),
12 414 B.R. 611, 614 (Bankr. N.D. Cal. 2008), aff'd, 2011 WL 1158022
13 (N.D. Cal. Mar. 28, 2011), (quoting In re Henry, 328 B.R. 664, 667
14 (E.D.N.Y. 2005)); 11 U.S.C. § 362(k). Neither the first or second
15 element was contested.

16 **1. SCCB's Notice of the Grewals' Chapter 7 Petition**

17 SCCB attempted to argue that SCCB never received notice of the
18 Grewals' Chapter 7 petition. The crux of this argument is that the
19 petition was served at a different address than the address
20 specified in the loan agreement between Mr. Grewal and SCCB.

21 However, SCCB, through its agent Ms. Crawford, received actual
22 notice of the bankruptcy petition. Ms. Crawford testified that Ms.
23 Crawford saw, on or about November 4, 2010, a letter from the

24 ¹³ There is some question as to the applicability of the
25 discharge injunction because the property was not listed in the
26 Grewals' bankruptcy schedules, as discussed infra. However, in
27 light of the clear violation of the automatic stay, it is
28 unnecessary to decide whether there was also a violation of the
discharge injunction.

1 Grewals' attorney to SCCB dated November 4, 2010; that letter
2 clearly stated that Mr. Grewal had filed for Chapter 7 bankruptcy
3 on October 18, 2010, and included the case number. Ms. Crawford
4 further testified Ms. Crawford had seen, on or about December 16,
5 2010, another letter sent from the Grewals' attorney to SCCB, which
6 clearly references the Grewals' status as Chapter 7 debtors,
7 including a case number.

8 Therefore, the Court finds that SCCB, at least by November 4,
9 2010, and certainly no later than December 16, 2010, had actual
10 notice of the Grewals' petition. The fact that notice of the
11 bankruptcy was mailed to an address other than that stated in the
12 loan agreement is of no importance.

13 Importantly, SCCB also had notice that the refrigerator and
14 water cooler were estate property. The Grewals had informed the
15 SCCB in pre- and post-petition correspondence that these two items
16 were the Grewals' personal property.

17 **2. Willfulness of the Violation**

18 In order to violate the automatic stay, a creditor's actions
19 must be willful. Bertuccio, 414 B.R. at 614. A violation is
20 willful if a party knew of the automatic stay, and its actions in
21 violation of the stay were intentional. Pinkstaff v. United States
22 (In re Pinkstaff), 974 F.2d 113, 115 (9th Cir. 1992). "To
23 effectuate the purpose of the automatic stay, the onus to return
24 estate property is placed upon the possessor; it does not fall on
25 the debtor to pursue the possessor." Taxel, 98 F.3d at 1151.

26 In the instant case, SCCB did not return the refrigerator or
27 the water cooler, changed the locks on the property to prevent the
28 Grewals from recovering either of these items, and, absent a single

1 meeting that ended unsuccessfully, did not make any attempts to
2 return these items to the Grewals or to the Chapter 7 Trustee.
3 SCCB's continued possession of these two items was intentional, and
4 thus a willful violation of the stay.¹⁴

5 **3. Damages**

6 The Grewals have established that they -- and the bankruptcy
7 estate -- have been deprived of the refrigerator and water cooler,
8 but that is all. The Grewals have not established that SCCB's
9 continued retention of the refrigerator and water cooler resulted
10 in any other damages to the Grewals or to the bankruptcy estate.
11 The Grewals made no attempt to quantify their loss at trial.

12 Interestingly, both the refrigerator and water cooler are
13 unadministered assets of the bankruptcy estate. Neither the
14 refrigerator nor the water cooler were listed in the Grewals'
15 bankruptcy schedules as personal property or as exempt. Mr. Grewal
16 testified that both the refrigerator and water cooler were subsumed
17 within the entry in Schedule B for "Automotive equipment including
18 wheel balancer and smog machine." This assertion stretches
19 credulity -- a refrigerator and water cooler are clearly not
20 automotive equipment -- but even if the Court were to assume that
21 these two items were encompassed within this category, it would
22 mean that both items had little or no value. This is because the
23 asserted value of the smog machine, alone, was \$18,000, minus
24 anticipated repair costs of \$3,200. If so, then the entire \$4,000

25 ¹⁴ As discussed supra, the Court did not find Ms. Crawford's
26 testimony to be entirely reliable or credible on the subject of
27 whether Mr. Grewal was allowed to take -- or actually took -- items
28 from the property during the November 10, 2010 meeting between Mr.
Grewal, his son Gurgas, Roberto Martinez, and Ms. Crawford.

1 would be subsumed by the smog machine, leaving no value to assign
2 to anything else.

3 In any event, the Court concludes that the entry for
4 "Automotive equipment including wheel balancer and smog machine"
5 was insufficient to encompass a water cooler or refrigerator.
6 Indeed, Mr. Grewal's testimony is to the contrary -- the
7 refrigerator and water cooler were for Mr. Grewal's personal use.
8 Therefore, these unscheduled assets -- which have never been
9 abandoned to the Grewals -- remain unadministered assets of the
10 bankruptcy estate. The Chapter 7 Trustee would be entitled to
11 liquidate both items for purposes of making payments to creditors,
12 or the Chapter 7 Trustee could elect to abandon these items to the
13 Grewals under 11 U.S.C. § 554 if the items have inconsequential
14 value or benefit to the estate. If the latter, then the Court
15 cannot say that these items have any value, now.

16 In addition, the Grewals presented no evidence of the value --
17 fair market or otherwise -- of the refrigerator or the water
18 cooler, or how the Grewals (or the bankruptcy estate) were damaged
19 by the deprivation of these items. Because neither asset appears
20 on the Grewals schedules, the Court cannot reference the schedules
21 to ascertain damages. Therefore, the Grewals have not established
22 that they are entitled to an award of damages for the stay
23 violation. However, the Court will order SCCB to turn over the
24 refrigerator and water cooler to the Chapter 7 Trustee for
25 administration or abandonment to the Grewals.

26 **4. Attorney's Fees**

27 The Grewals have requested an award of attorney's fees in this
28 case. The recoverability of attorney's fees for a stay violation

1 was addressed and limited by the Ninth Circuit in Sternberg v.
2 Johnston, 595 F.3d 937 (9th Cir. 2010). The Grewals may not
3 recover fees incurred in pursuing an award of damages. Instead,
4 the Grewals can only recover fees incurred in seeking the return of
5 the refrigerator and the water cooler.

6 The claims asserted in the Amended Complaint primarily seek an
7 award of damages, not the return of any property. The bulk of this
8 litigation has also been aimed at recovering an award of damages,
9 not at recovering any property for the Grewals or their bankruptcy
10 estate. To this extent, the Grewals are not entitled to an award
11 of attorney's fees.

12 However, the Amended Complaint prays for the restoration of
13 any property seized in violation of the automatic stay. Pursuant
14 to the preliminary injunction entered on April 26, 2011, SCCB
15 should continue to have possession of the water cooler and
16 refrigerator. Although these two items must be returned to the
17 Chapter 7 Trustee for administration, the Grewals have not
18 demonstrated what attorney's fees they incurred with regard to this
19 narrow piece of the litigation.

20 21 IV. CONCLUSION

22 The Court finds that the Grewals have proven a violation of
23 the automatic stay, but only with respect to SCCB's post-petition
24 retention of the water cooler and small refrigerator. Within 10
25 days of this Order, the SCCB shall turn these two items over to the
26 Chapter 7 Trustee. However, the Grewals have proven no damages
27 resulting from the stay violation, and have not established what,
28 if any, attorney's fees they incurred in seeking the return of the

1 refrigerator or water cooler. Therefore, no damages or attorney's
2 fees are awarded.

3 IT IS SO ORDERED.

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5 *** End of Memorandum Decision and Order ***

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COURT SERVICE LIST

**All parties served electronically by ECF